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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of:

Paging Network of Virginia, Inc.)
Application for Nationwide)
Narrowband PCS Frequency Block No. 1)

File No. 28046-CN-P/L-94
Call Sign KNKV 201

TO The Commission:

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PETITION FOR DECLARATION OF DEFAULT,
ASSESSMENT OF PENALTY AND REQUEST FOR A NEW AUCTION

Pursuant to the Federal Communications Commission (FCC or Commission) Rules and Regulations, specifically, Section 1.2109(c), Section 24.308(b), and Section 1.2104(g)(2)¹ Edward M. Johnson (Johnson) requests default procedures to be instigated in the above proceeding.

The Commission on January 9, 1995 released a Memorandum Opinion and Order (Order)² which inter alia granted the application of Paging Network of Virginia, Inc. (Paging) in the above proceeding. See Paragraph 35 of Order.³

The Commission rules required Paging to deposit 64 Million Dollars with the Commission "within five (5) business days following the award of the license." See 47 CFR 24.308.

The penalties for non-compliance are very clear and are non-

¹See 47 CFR Sections 1.209(c), 24.308(b) and 1.2104(g)(2) as adopted in 1994 by the Commission in PP Docket No. 93-253.

²See Order DA 95-21 by the Chief, Wireless Telecommunications Bureau adopted January 6, 1995. License KNKV 201 assigned.

³Johnson is a party in interest to the proceeding as an applicant for the same auction and as a Petitioner in Paging's License Application.

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discriminatory⁴

47.CFR Section 1.2109(c) (emphasis added)

(c) "A winning bidder who is found unqualified to be a licensee, fails to remit the balance of its winning bid in a timely manner, or defaults or is disqualified for any reason after having made the required down payment, will be deemed to have defaulted and will be liable for the penalty set forth in Section 1.2104(g)(2). In such event, the Commission will conduct another auction for the license, affording new parties an opportunity to file applications for the license.

The Monday, January 9, 1995 released Order required the payment before the end of business, January 17, 1995.

Paging was not timely, and must "be deemed to have defaulted under the Commission's rules." The rules incorporates the mandate "will be deemed to have defaulted."

Ten (10) days from the date of the released Order Paging is reported to have wire transferred 64 Million Dollars. Funds were reported transferred on January 19, 1995 at 2:36 p.m. EST.⁵

Conclusion

Paging is subject to the requirements and penalties specified in the Commission rules. Its application must be dismissed, and new parties must be afforded "an opportunity to file application for the license."

⁴The Commission was reminded in Northeast Cellular Telephone Co., L.P. v. FCC 897 F.2d 1164 (D.C. Cir. 1990) that discriminatory applications of its rules are not permitted. The FCC referred to this requirement on January 12, 1995 in DA 95-37 decision.

⁵The Commission is entitled to retain \$2,400,000 penalty plus any difference in the next auction for Frequency Block 1. See 47 CFR Section 1.2104(g).

Respectfully Submitted,



EDWARD M. JOHNSON
P.O. Box 2688
Crossville, TN 38557
615-484-3421

January 23, 1995

AFFIDAVIT OF EDWARD M. JOHNSON

I, **EDWARD M. JOHNSON**, under penalty and perjury do hereby state that I have read the attached Petition for Declaration of Default, Assessment of Penalty and Request for a New Auction and statements are true to the best of my knowledge and belief.


EDWARD M. JOHNSON

Dated: January 23, 1995

CERTIFICATE OF SERVICE

A copy of this Petition was transmitted by Facsimile and U.S. First Class Mail on January 23, 1995 to:

Judith St. Ledger-Roty
James J. Freeman
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EDWARD M. JOHNSON